U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 2 3 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a mathematics teacher for [redacted] in Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on February 9, 2012. USCIS records show that [redacted] had filed a petition on the alien's behalf, with an approved labor certification, on June 29, 2010. Counsel acknowledged this earlier filing, and attributed its denial to "the unfortunate incident that happened to [redacted]." Counsel did not elaborate as to the nature of "the unfortunate incident," but it is a matter of public record that USCIS invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against [redacted] owing to certain immigration violations by that employer. As a result, between March 16, 2012 to March 15, 2014, USCIS will

not approve any employment-based immigrant or nonimmigrant petitions filed by This debarment means that is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218 n.5.

The petitioner signed a "Personal Statement" that referred to her in the third person. Following a description of the petitioner's educational background and employment history, the statement reads:

> She was hired by to teach in She managed to handle different subjects in Mathematics from Grades 9-12 and also made provision in lessons for differentiation of instruction for special learning needs, gifted and talented, English Language Learners and culturally and religiously diverse student population at the same time exposing them to different modalities of learning that would support their developmental needs and progress. [The petitioner] will continue to awaken the never ending curiosity of students to seek for knowledge and be open-minded for more challenges.
>
> She provided academic support program [*sic*] for struggling students outside school hours like Extended Learning Opportunities (ELO), and After-School tutoring. She also assisted students for boot camp in finishing their project to qualify them for graduation. [The petitioner's] passion and tireless diligence in giving meaningful education to students paid off. Evidence showed that scores in the improved tremendously with increasing level of proficiency as advanced and proficient.

The petitioner submitted copies of several "Certificate[s] of Appreciation," mostly from employers, citing her performance in raising students' test scores, judging contests, volunteering, and generally for superior performance as a teacher. The petitioner submitted no background evidence about these certificates to show that they meaningfully distinguish her from others in her field.

Several witness letters accompanied the petition, all from individuals who have worked with the petitioner in some capacity. Most of the witnesses are on the staff of Maryland, where the petitioner began teaching in 2007. Two witnesses are the petitioner's students at and another works at the and , where the petitioner "assisted in scoring student projects for the Academic Validation Program." The only witness not affiliated with PGCPS worked with the petitioner at These witnesses praised the petitioner's skills and dedication as a teacher, but did not claim or explain how the benefit from the petitioner's work would extend beyond her own classroom.

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[1] The list of debarred employers is available online at http://www.dol.gov/whd/immigration/H1BDebarment.htm (printout added to record January 9, 2013).

The director issued a request for evidence on April 4, 2012, instructing the petitioner to explain how her "employment with a high school in Maryland is a benefit to the nation," and to show that her "past record justifies projections of a future benefit to the nation." The director noted the petitioner's submission of numerous certificates, but found that the petitioner had submitted nothing to show their significance.

In response to the notice, the petitioner submitted background materials about the need to improve mathematics education. These materials demonstrate the substantial intrinsic merit of math education, but not that the benefit from one teacher's efforts is national in scope. Counsel pointed to federal legislation and other national-level efforts relating to education, but local work in pursuit of a national goal does not necessarily yield a benefit that is, itself, national in scope. Counsel did not explain how the petitioner's work would, by itself (rather than as one small part of a much larger effort) benefit the United States as a whole, nor did counsel identify any prior achievement by the petitioner that yielded national benefits. The collective, abstract benefits of math education do not imply that the petitioner, as a math teacher, presumptively qualifies for the waiver.

The petitioner submitted copies of newspaper articles, some of which the petitioner wrote, while others featured her as a subject. The clippings do not identify the newspapers, which appear to be internal school publications. These articles show that student test scores improved at schools where she was a teacher or administrator, but they do not demonstrate that the petitioner initiated improvements or reforms that have had, or are having, national-level results.

On August 29, 2012, the director denied the petition, stating that the petitioner had not established a past record of achievement and influence that would justify the special benefit of the national interest waiver. On appeal, counsel asserts that the petitioner's "request for the waiver of the labor certification is premised on her Master's degree in Teaching Mathematics. She also has more than 27 years of progressive work experience." These factors affect eligibility for the underlying immigrant classification, but not for a waiver of the job offer requirement that, by statute, is an integral part of that classification.

The director, in the request for evidence, had informed the petitioner that additional evidence was necessary in order to establish the significance of the various certificates that the petitioner had submitted. Counsel, on appeal, protests: "the Immigration Service is requiring more from the beneficiary's credentials and tantamount to having exceptional ability," even though one need not qualify as an alien of exceptional ability in order to receive the waiver. It remains that the petitioner's certificates do not facially establish eligibility for the national interest waiver. Counsel clearly considers these certificates to be significant, listing them again on appeal, while at the same time protesting that the petitioner need not explain how the certificates are significant. The director did not require the petitioner to establish exceptional ability in her field. Instead, the director made the reasonable request for the petitioner to show how the numerous certificates in the record serve to establish eligibility for the waiver. The petitioner failed to address that request, and counsel cannot mitigate that failure by claiming that the director went "over-board" by making the request in the first place.

Counsel states that the petitioner's positive impact on her students, "who are future U.S. workers and thus equally protected by labor certification process," warrants waiving that process in her own case. Counsel observes that the petitioner has documented "the adverse effect of declining quality of education in Math and Science in the United States." The petitioner had not, however, established the role she has played in reversing that trend on a national level. Counsel states:

> [T]he most tangible national benefit to be derived from a 'Highly Qualified Mathematics Teacher' is recreating a society of responsible and valued-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again including national security.

Counsel fails to explain how the actions of one mathematics teacher would contribute significantly to nationwide social reform and economic recovery. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). General assertions about the overall importance of education, and the need for education reform, do not exempt every teacher from the job offer requirement. As members of the professions (as defined in section 101(a)(32) of the Act), teachers are subject to the job offer/labor certification requirement set forth in sections 203(b)(2)(A) and (3)(C) of the Act. Likewise, aliens of exceptional ability who "will substantially benefit prospectively . . . the United States" are also subject to the job offer provision of section 203(b)(2)(A) of the Act. Congress created no blanket waiver for math teachers. It is clear from the statute, therefore, that an alien who works in a beneficial profession such as teaching mathematics is not automatically or presumptively exempt from the job offer requirement.

Counsel denounces "the tedious process of labor certificate" (*sic*) and asserts that the minimum educational requirement for the petitioner's position is a bachelor's degree, and therefore the Department of Labor would likely deny an application for labor certification that required a higher degree. The record shows that [redacted] did, in fact, obtain an approved labor certification for the alien, which set the minimum education requirement at a master's degree. The Department of Labor approved the labor certification on September 2, 2010, 65 days after its June 29, 2010 filing. Thus, documented facts contradict counsel's speculative assertions about what might result from the labor certification process. [redacted] debarment prevented the approval of a petition based on that approved labor certification, but the record nevertheless proves that an employer seeking a labor certification for the alien not only can do so, but has done so. Counsel is aware of [redacted]'s earlier petition, having referred to it in previous correspondence, making counsel's new assertions all the more unsupportable.

Counsel makes little effort to distinguish the petitioner from other qualified professionals in her field (apart from listing her certificates, as discussed above). Instead, counsel again appeals to the underlying merit of her occupation as a whole. Counsel asserts: "Exclusively and strictly enforcing the rudiments behind the New York State Department of Transportation Case to Highly Qualified

Teachers is unjust, unreasonable and damaging to the 'Best Interest' of the American School Children." Precedent decisions are binding on all USCIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). Counsel cites no statute, regulation or case law that would require or permit USCIS to disregard *NYSDOT* as it applies to school teachers. Counsel repeatedly refers to presidential speeches and federal initiatives such as No Child Left Behind, stating that they demonstrate the "underlying urgency on this matter," but counsel identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.